

III. REMARKS

Claims 1, 2, 4-7, 9-12 and 14-22 are pending in this application. Claims 1, 7 and 12 have been amended. Support for these amendments is found in Applicant's original specification, including for example at page 7, "time slice percentage provides..."

Applicant is not conceding in this application that those claims are not patentable over art cited by the Examiner, as the present claim amendments and cancellations are for facilitating expeditious allowance of the claimed subject matter. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application.

Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 1, 2, 4-7, 9-12 and 14-22 are rejected under 35 U.S.C. 112, second paragraph as being allegedly indefinite. Further, the Office rejected claims 1, 2, 4-7, 9-12 and 14-22 under 35 U.S.C. 101 as being allegedly drawn to non-statutory subject matter. Additionally, the Office rejected claims 1, 2, 4-7, 9-12, 14 and 15 under 35 U.S.C. 103(a) as allegedly being unpatentable over Rooney ('Intelligent Resource Director', 2002), hereinafter "Rooney", in view of Kyne ('z/OS Intelligent Resource Director', 2001), hereinafter "Kyne", and in further view of Buttlar ("z/CECSIM: An Efficient and Comprehensive Microcode Simulator for the IBM eServer z900", 2002), hereinafter "Buttlar." Even further, the Office rejected claims 16-22 under 35 U.S.C. 103(a) as allegedly being unpatentable over Rooney in view of Buttlar. Applicant respectfully asserts that the amended claims are in condition for allowance.

With respect to claim rejections under 35 U.S.C. 112, second paragraph, Applicant respectfully submits that the claims are in condition for allowance. The term “outputting”, added in the Amendment filed on 4 May 2007, and in response to the Office’s request, is sufficiently definite in the context of a computer modeling simulation. The very nature of the claimed invention is such that outputting a result is inherent and without need of further explanation. With respect to the term “agree”, the Office is directed to Applicant’s specification at page 8. With respect to further allegedly indefinite terms, the Office is directed to Applicant’s specification at pages 6-11. Applicant submits that all other allegedly indefinite terms are defined, either explicitly or inherently, within the Applicant’s specification. As such, Applicant requests withdrawal of the rejections.

With respect to claim rejections under 35 U.S.C. 101, Applicant respectfully submits that the claims are in condition for allowance. Regarding the term “outputting,” the Office is directed to Applicant’s discussion of the term above. The process of “outputting” is in itself a tangible result, and therefore falls under the umbrella of statutory subject matter. Regarding the Office’s argument with respect to claim 1, the fact that outputting occurs regardless of whether CPs are dispatched is in itself a tangible result, and therefore qualifies as statutory subject matter. Regarding claims 7, 18 and 20, Applicant submits that those claims are all drawn to the systems claimed. For example, claim 18 reads, *inter alia*, “a system for running each model and determining an observed consumption for each model.” (Claim 18). This system and those of claims 7 and 20 clearly produce a tangible, useful, and concrete result. As such, all of the claims fall under the umbrella of statutory subject matter. Finally, the “medium” disclosed in claims

12 and 19 can be in any form that is readable by a computer. (Claim 12, “computer readable”; Claim 19, “recordable”). These terms do not need further explanation within the specification in order to qualify as statutory subject matter under 35 U.S.C. 101, as they are drawn to tangible, concrete, and useful products which can be stored on any number of media. As all of the above-mentioned terms qualify as statutory subject matter, Applicant requests withdrawal of the rejections.

With respect to claim rejections under 35 U.S.C. 103(a), currently amended claim 1 reads, “calculating a time slice percentage for the LPAR based on the resource percentage and CP (central processor) data” (Claim 1, and similarly recited in claims 7 and 12)(Emphasis added). The Office posits that Rooney discloses using the resource percentage to calculate a time slice percentage. (Office Action at 4). However, Rooney does not discuss the use of a resource percentage in order to determine a time slice percentage. In fact, Rooney does not discuss the use of a resource percentage as in the invention of claims 1, 7 and 12. Further, neither Kyne nor Buttlar overcome the deficiencies discussed above. In fact, the “time slice” cited by the Office in Kyne explicitly fails to disclose the use of a resource percentage in its calculations. (Office Action at 6)(Kyne at 55). Therefore, Rooney alone, or a combination with Kyne and/or Buttlar cannot possibly disclose, “calculating a time slice percentage for the LPAR based on the resource percentage and CP (central processor) data.” In view of this fact, Applicant respectfully requests withdrawal of the rejections.

With respect to the rejections of claims 16-22 under 35 U.S.C. 103(a), Applicant respectfully contends that neither Buttlar nor Rooney provide a sufficient reason to combine these two references in a manner consistent with the claimed invention. Despite

the Office's broad contention that "tight development schedules and a very limited supply of expensive engineering hardware" provide a motivation to combine the above-mentioned references, this rationale is insufficient to prove a case for obviousness. (Office Action at 10-15). Buttlar at best discloses a common theme in almost all fields of engineering and business: the need to complete tasks faster and at a lower cost. However, the mere mention of this pervasive truth does not provide motivation to combine Buttlar with Rooney. As the Office lacks a more specific reason for combining these references, Applicant submits that the combination of Buttlar with Rooney is an improper basis for an obviousness rejection. Accordingly, Applicant requests withdrawal of the rejections.

The dependent claims are believed allowable for the same reasons stated above, as well as for their own additional features.

Applicant respectfully submits that the Application as presented is in condition for allowance. Should the Examiner believe that anything further is necessary in order to place the application in better condition for allowance, the Examiner is requested to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,

/Joseph J. Christian/

Joseph J. Christian
Reg. No. 51,560

Date: 28 April 2008

(MP)

Hoffman, Warnick and D'Alessandro, LLC
75 State Street, 14th Floor
Albany, New York 12207
Phone: (518) 449-0044
Fax: (518) 449-0047